

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

JONATHON D. MONROE,

:

Petitioner, : Case No. 2:07-cv-258

:

-vs- : District Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

WARDEN, Ohio State Penitentiary,

:

Respondent.

**DECISION AND ORDER DENYING MOTIONS TO EXPAND THE
RECORD AND FOR EVIDENTIARY HEARING**

This capital habeas corpus case is before the Court on Petitioner's Motions for Evidentiary Hearing (Doc. No. 103) and to Expand the Record (Doc. No. 104) Discovery (the "Second Motion," Doc. No. 102). The Warden opposes both Motions ("Response," Doc. No. 107) and Monroe has filed a Reply in Support ("Reply," Doc. No. 113). These Motions are non-dispositive and thus amenable to a Magistrate Judge ruling instead of a recommendation. 28 U.S.C. § 636(b).

Both Motions must be denied on the authority of *Cullen v. Pinholster*, 563 U.S. ___, 131 S. Ct. 1388 (2011). Petitioner's suggested distinction of the Ohio process from that of California ("Pinholster had two full rounds of state post-conviction litigation" PageID 7184) is attractive, but so far as this Court is aware, unadopted by any circuit court. *Richardson v. Branker*, 668 F.3d 128 (4th Cir. 2012), cited for the proposition that this Court can hold an evidentiary hearing where "the state courts passed on the opportunity to adjudicate the claim on a complete record," (Doc. No. 103, PageID 7185), refers to a pre-*Pinholster* decision, *Winston v. Kelly*, 592 F.3d

535, 557 (4th Cir. 2010). Prior to *Pinholster*, this Court also regularly held evidentiary hearings in capital habeas corpus cases.

In opposition, the Warden cites *Moore v. Mitchell*, 708 F.3d 760 (6th Cir. 2013), where the court used jurisdictional language to emphasize the strength of the holding in *Pinholster* and to apply it to exclude consideration of evidence added to the federal court record by agreement. *Id.* at 781.

The Court concludes that *Pinholster*, particularly as interpreted in *Moore*, requires that both Motions be, and they hereby are, DENIED.

August 19, 2014.

s/ *Michael R. Merz*
United States Magistrate Judge